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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,646	01/20/2004	Brian J. Lowe	1001.1653101	5311
28075	7590	02/27/2006		
CROMPTON, SEAGER & TUFTE, LLC 1221 NICOLLET AVENUE SUITE 800 MINNEAPOLIS, MN 55403-2420			EXAMINER JACKSON, GARY	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 02/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/762,646	<b>Applicant(s)</b> LOWE ET AL.	
	<b>Examiner</b> Gary Jackson	<b>Art Unit</b> 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 6/20/2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 13-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 13 and 15-34 is/are rejected.
- 7) ☒ Claim(s) 14 and 35 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 5/17/05, 12/7/04.

- 4) ☐ Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: IDS: 5/3/2004.

*Gary Jackson*

### **DETAILED ACTION**

This action is responsive to applicants' amendment filed June 20, 2005. The arguments have been considered, but not deeming to place the application in condition for allowance. Claims 1-11 and 13-34 are pending in this application.

### **Response to Arguments**

Applicants' arguments concerning the rejection under 35 USC 102(e) is direct to figures 7 and 8, indicating that they do not disclose the added limitation of "wherein at least a portion of the distal region has an increase wall thickness relative to adjacent portions of the distal region". However, it can clearly be seen in figures 9 and 10 that "... at least a portion of the distal region has an increase wall thickness relative to adjacent portions of the distal region". Though the examiner directed applicants attention to figures 7 and 8 for such limitations, applicants should considered the entire document as prior art including figures 9 and 10. Regarding claims 15, 24 and claims dependent thereon, applicants presented the same arguments as to claim 1; therefore not tenable for the same reasons. Concerning claims 14 and 35, the examiner has withdrawn the rejection of said claims. Thus the examiner has repeated the rejection as set forth in the previous Official Action mailed March 22, 2005.

### ***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-3, 9-11, 15, 20-22, 24, 25 and 30-34 are rejected under 35 U.S.C. 102(e) as being anticipated by Renati et al. 2004/0044359. Renati discloses a device for

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use with an embolic protection filter comprising an elongate sheath having a proximal region, a distal region, a lumen extending therethrough, and a distal mouth disposed adjacent the distal region', wherein the distal mouth is expandable and is adapted to shift between a basal configuration and an enlarged configuration; and wherein the distal region includes a bulbous member in the basal configuration. Note figures 3-12.

Regarding claim 2, Renati discloses the bulbous member including a tapered proximal edge and a tapered distal edge. See figures 6-12.

Regarding claim 3, Renati discloses the proximal region of the sheath attached to the distal region of the sheath. See figure 6.

Regarding claims 9-12,32-34, note figures 7-8.

Regarding claim 15, note figure 10.

Regarding claims 20-22, Renati discloses the grooves 364.

### ***Claim Rejections - 35 USC § 103***

Claims 4-8,16-18,23,26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Renati et al. 2004/0044359 in view of Johnson et al. 659601 1.

Renati discloses the invention as claimed except for a braid. However, Johnson discloses a sheath reinforced with braid. See column 6, lines 58-61, and column 9, lines 53-55. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to modify Renati by including a braid in view of Johnson to provide more strength to the sheath.

***Response to Arguments***

Applicant's arguments filed June 20, 2005 have been fully considered but they are not persuasive. See the Response to Arguments above.

This action is deemed proper, thus made Final.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Jackson whose telephone number is (571) 272-4697. The examiner can normally be reached on Mon.-Thurs. 7:30 am to 6:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

***Allowable Subject Matter***

Claims 14 and 35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments filed June 20, 2005 have been fully considered but they are not persuasive. See the Response to Arguments above.

This action is deemed proper, thus made Final.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gary Jackson  
Primary Examiner  
Art Unit 3731



gj  
February 15, 2006